



राजपत्र, हिमाचल प्रदेश

(असाधारण)

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित

शिमला, मंगलवार, 26 सितम्बर, 1989/4 आश्विन, 1911

हिमाचल प्रदेश सरकार

LABOUR DEPARTMENT

NOTIFICATION

Shimla-2, the 26th September, 1989

No. 19-3/89-Shram.—In exercise of the powers vested in him under Section 17 (1) of the Industrial Disputes Act, 1947, the Governor, Himachal Pradesh is pleased to publish the award of the Presiding Officer, Labour Court/Industrial Tribunal, Himachal Pradesh in the case No. 280 of 1985 titled as Himachal Pradesh Civil Supplies Corporation Karamchari Union, Mandi, Himachal Pradesh *versus* Managing Director, Himachal Pradesh Civil Supplies Limited Corporation, Shimla, Himachal Pradesh.

By order,
Sd/-
Secretary.

Before Shri S. S. Ahuja, Presiding Officer, Industrial Tribunal, Himachal Pradesh

Case No. 280 of 1985

Himachal Pradesh Civil Supplies Corporation Karamchari Union, Mandi, Himachal Pradesh .. Petitioners.

Versus

Managing Director, Himachal Pradesh Civil Supplies Limited Corporation, Shimla, Himachal Pradesh .. Respondent.

Shri P. L. Bory, Authorised Representative for the Petitioners.

Shri H. R. Vashist, Authorised Representative for the Respondent.

AWARD

On the disputes having been raised by Himachal Pradesh State Civil Supplies Corporation Employees Union, the Governor of Himachal Pradesh in exercise of powers under section 12 (5) read with section 7 of the Industrial Disputes Act, 1947 has made the following reference (English re-translation) to this Tribunal *vide* notification dated 27-8-1985 :—

Demand 1: Whether all the employees of the corporation should be given the prescribed pay scales?

Demand 2: Whether all the employees of the corporation should be appointed on fixed wages/salary?

Demand 3: Whether the employees should be given the following pay scales :—

No. 1. Sales Depot Incharge/Retail Shop Incharge	Rs. 700—1200
No. 2. Helper	Rs. 400—600
No. 3. Peon	Rs. 300—430
No. 4. Driver	Rs. 510—940
No. 5. Truck Cleaner	Rs. 400—600
No. 6. Assistant Accountant	Rs. 620—1200
No. 7. Accountant	Rs. 700—120
No. 8. Senior Accountant	Rs. 800—1400 + 50 S.P.
No. 9. Assistant	Rs. 750—1300
No. 10. Chowkidar	Rs. 300—430
No. 11. Steno:—The post of Steno-typist should be upgraded to that of the senior scale Stenographer in the pay scale of Rs. 700—1200.	

Whether the demands are justified and in order. If not, to what amount of exact compensation and assistance the employees of the Civil Supplies Corporation are entitled to?

2. Petitioner worker Union filed the Statement of claim and had maintained that the respondent Himachal Pradesh State Civil Supplies Corporation is an undertaking of the Himachal Pradesh Government and is functioning like other corporations/boards of the Himachal Pradesh Government. The petitioner Himachal Pradesh State Civil Supplies Corporation Employees Union has claimed to be representative body of Corporation employees and Union is registered under the Trade Union Act, 1926. The petitioner union has averred that the demand notice was served on the respondent management and conciliation proceedings were conducted by Chief Conciliation Officer (Deputy Labour Commissioner) and some of the demands of the workers were conceded and the demands which could not be settled have been referred to this Tribunal.

3. The petitioner union has given details of each demands which have been covered under demand one and two respectively. According to their first demand pertaining to the grant of pay scales to each category of employees, it has been averred that on the basis of principle of employment, pay scales should be fixed for each category of employees, so that they are entitled to annual increment which should be fixed in accordance with status, responsibilities, educational qualifications and nature of duties performed by them. In their view the status of the workers is adjudged by the pay scales. They further averred that certain categories of employees such a Sale Depot Incharge, Retail Shop Incharge (SDI/RSI) and Helpers have no fixed pay scales. SDI/RSIs are being paid Rs. 200/- per month besides commission @ Rs. 120/- per lac. Some of the SDI/RSI, who are working in the office, are paid fixed emoluments @ Rs. 600/- per month. The helpers working in Godowns and Shops are employed on daily wages at different rates. It has also been claimed that certain categories of Peons, Chowkidars, Drivers, Truck Cleaners, Assistant Accountants etc., who were being paid fixed salaries and now those employees have been granted regular pay scales, but the SDI/RSIs and Helpers are still left out and are being paid wages as detailed above. It has been further claimed that SDI and RSIs are well educated employees having qualification of Graduation and Post-Graduation and having been employed after due requisition from Employment Exchanges. The workers union has averred that the commission paid to SDI/RSI on sale is good incentive as it promotes sale of commodities but the quantum of commission varies from place to place and there is no guarantee of pay packet. They have rather sought commission along with suitable pay scales.

4. Regarding the second demand pertaining to the fixation of pay scale for each employees, the petitioner union has claimed different pay scales for different categories of employees. However, in view of the fact that most of the categories of employees excepting SDI/RSIs and helpers have been allowed pay scales, the pay scales claimed for other categories of employees is not being referred to as it has not been pressed. The petitioner union has claimed pay scales of Rs. 700—1200 for the post of SDI/RSIs on the basis that these employees are back bone of the corporation and as profits and losses of the corporation depends on the efforts and hardworking of these employees to a great extent and such employees are well educated persons. It has also been mentioned that these employees are required to handle Accounts, goods of lacs of rupees and dealing with customers, besides attending different meetings, preparation of sales tax returns, submission of bills, audit paras, physical verification of goods of Godown scattered at different places, handling of bank dealing, receiving of goods etc. In view of the nature of duties they have claimed pay scales of Rs. 700—1200. The petitioner union has also sought pay scale for Helpers at Rs. 400—600 on the plea that this kind of service have to hold very responsible job of finance and goods as the nature of duty is different than the duties of Class-IV employees.

5. The respondent management, i.e., Himachal Pradesh State Civil Supplies Corporation, Shimla (hereinafter referred to as Corporation) in its reply has claimed that the corporation is a company covered under section 3 of the Companies Act, 1956 and is governed by its Memorandum and Article of Association and Service Bye-laws. Regarding the claim of pay scales, it has been averred that the employment in an organisation need not necessarily be based on pay scales for each category of employees. The SDI/RSIs have been employed on the fixed salary of Rs. 200/- per month and commission based on slab system subject to minimum of Rs. 400/- resulting in minimum pay of Rs. 600/- per month. It has also been claimed that the respondent corporation has made conscious efforts to link wages with productivity/sales while fixing wages of the incumbents who are required to do sales work. According to respondent the scheme for setting up of corporation provides regular pay scales to all the categories excepting the incumbents involved in sale process. As far as Helpers are concerned, it has been averred that they merely assist the RSI in weighment/measurement of goods only and as such they are employed on daily basis. Respondent corporation has justified the existing mode of payment for these categories of employees in the public interest and the fact that the requisition to the Employment Exchanges clearly provided the pattern of salary and commission structure and employees having accepted appointment on such conditions under the corporation and they cannot have any grouse for the different treatment with other categories of employees.

6. The petitioner Union had then filed replication reiterating the facts detailed in the statement of claim and further pleaded that the requisition to Employment Exchanges offered fixed pay not only to SDI/RSI, but to other categories of employees also who have since been allowed the regular pay scales.

7. On the basis of the pleadings of the parties, my Ld. Predecessor had framed the following issues :—

1. Whether the Sale Depot Incharge and Retail Shop Incharge are entitled to fixed pay scale as suggested. If so, what is the pay scale? (OPP)
2. Whether the Helpers are entitled to regular pay scales. If so, at what rate and what scale? (OPP)
3. Whether Peons, Drivers, truck cleaners, assistant accountants, accountants, Senior accountants, Assistant and chowkidars are entitled to pay scales as demanded by the Union. If so, at what scale? (OPP)
4. Relief.

FINDINGS

Issue No 1 and 2.

8. Both these issues are being taken up together as they are interconnected and require appreciation of almost entire evidence. The petitioner Union had initially examined only two witnesses i.e. Shri Sunder Lal Mehta, PW-1, who is the General Secretary of the petitioner union and Shri Edadshi Dass, PW-2 a Sale Depot Incharge. After the evidence was adduced by the respondent management consisting of statement of Shri R. C. Katoch, Divisional Manager, RW-1 and M.R.Panta, Distribution Manager, RW-2, my Ld. Predecessor had heard arguments and thereafter an application was filed by the petitioner union seeking permission to adduce additional evidence and said application was allowed and then petitioner union examined Shri Krishan Kumar, PW-3, an employee working in Panjab State Civil Supplies Corporation and Shri Mehar Singh, PW-4, Assistant Store Keeper, Himachal Pradesh Agro Industries Corporation. The respondent management also examined Shri Ajai Pal, RW-3, who is the Deputy Manager Panjab State Civil Supplies Corporation, in rebuttal.

9. Before advertiring to the legal aspects of the case, the evidence led by parties is being noticed in detail. Shri Sunder Lal Mehta, PW-1 has testified that the employees of Himachal Pradesh Government are allowed pay scale as fixed for the different category of employees of the Panjab State. He has also deposed that similarly the employees of various corporations/boards of Himachal Pradesh are also allowed pay scale fixed for different categories of employees of the respective corporations/boards of the Panjab State. This witness has deposed that there is a Civil Supplies Corporation in Panjab State under the name of Punjab State Civil Supplies Corporation (PUNSUP). He has also deposed that at the time of establishment of respondent corporation, all the employees were engaged on the basis of consolidated emoluments and after some time employees such as Accountant, Steno-typist, Assistants, Driver, Conductor, Peon and Chowkidar have been allowed emoluments in regular pay scales. Only SDI/RSIs and Helpers are still being paid consolidated emoluments. Shri Mehta has also deposed about the duties performed by the SDI/RSIs. Shri Edadshi Dass, PW-2 who is a SDI at Kullu has deposed that he is being paid Rs. 200/- per month besides commission. He has proved the prevalent pay scales in the Panjab State Civil Supplies Corporation by adducing copy Ex. P-1. This witness has claimed that in Panjab SDI/RSIs are designated as Inspectors who are in the pay scale of Rs. 570—1080. He has also deposed that in the Himachal Pradesh Agro Industries Corporation, the post of Store Incharge is in the pay scale of Rs. 700—1200 and the post of Assistant Store Incharge is in the pay

scale of Rs. 570—1080 and the copy of the Himachal Pradesh Agro Industries Corporation pay scale is Ex-P-2. He has also deposed about the various duties performed by the SDI's which include the purchase and procuring besides handling of Accounts, preparing of returns and attending the meetings at the District level. He has also proved the functions of Retail/Sale Depot Incharge given in detail in Ex.P-3 and instructions issued by the Manager of the Corporation from time to time as detailed in Ex.P-4. to Ex.P-11. He has pleased ignorance about the existance of post of Public Distribution Clerk in the Panjab State Civil Supplies Corporation. Shri Krishan Kumar PW-3 who is the employee of Panjab State Civil Supplies Corporation has proved the rules of the Civil Supplies Corporation and has deposed the Inspector is in fact a Salesman and Incharge of the Store in the Panjab State Civil Supplies Corporation with pay scale of Rs. 570—1080 as per Annexure -C/Ex.P-1. This witness had admitted in cross-examination that he is the General Secretary of Panjab State Civil Supplies Corporation Employees Union. He has also admitted that duties of Inspectors are mentioned in manual of the Corporation which has not been brought by him nor produced in this Court. He has also admitted that there are three Public Distribution Clerks working under him and they are performing the job of Sales, issue of release order, loading and un-loading of commodities from the vehicle besides preparing of cash memos. Shri Mehar Singh, PW-4 is the Assistant Store Keeper of Himachal Pradesh Agro-Industries Corporation and he has deposed that the Assistant Store Keeper functions as salesmen who are in regular pay scale.

10. The respondent corporation on the other hand relies upon the testimony of Shri R.C. Katoch, Divisional Manager RW-1 and Shri M.R.Panta, Distribution Manager, RW-2, and Shri Ajai Pal, Deputy Manager, Parjab State Civil Supplies Corporation, RW-3. Shri Katoch has deposed that the District level meetings of the Public Distribution Committees are being attended by the Area Assistant Managers. However, SDI attached with headquarters is required to attend the meeting at the Sub-Division level. In cross-examination he has admitted the various duties being performed by SDI which include preparation of sales, maintenance of Accounts operate the store and collection of sale proceeds and deposits the same in the bank. He has admitted that Assistant Accountants were initially appointed on fixed wages, but after two years service are allowed regular pay scales. Shri M.R.Panta, RW-2 has deposed that the salesmen were appointed on the basis of requisition sent to the Employment Exchanges, copy of which is Ex.R-1 and they were offered appointment on the basis of selection. The copy of the appointment letter is Ex.R-2. Similiar other requisitions and appointment letters having been proved as Ex.R-3 to Ex.R-6. He has also proved the copy of the letter dated 25-7-1981 Ex.R-7 which reflect increase in the commission being paid and another copy of letter dated 7-6-1984 Ex.R-8 recording further increase in the commission and yet another letter dated 16-10-1985 Ex.R-9 depicting further increase in the commission paid to SDI/RSIs. Lastly, Shri Ajai Pal, RW-3 has proved the copy of letter sent by Panjab State Civil Supplies Corporation as Ex.R-17 and has deposed that in their organisation, Salesman is known as Public Distribution Clerk. In cross-examination, he has deposed that Inspector is the overall incharge of the sale and receipt of the supplies and is required to pay for the freights in respect of supplies received. He has clearly stated that the Public Distribution Clerk are assigned the duties for specific articles. According to this witness, since 1981, their organisation is not having any Fair Price Shop and previously Shop Assistant Grade-I were Incharge of Sale and they are now designated as Public Distribution Clerk and are in the pay scale of Rs.400—600. He has also deposed that Shop Assistant Grade-II are also known as Helpers and are in the pay scale of Rs. 300—430.

11. Before appreciating the evidence adduced by the parties, it is necessary to notice that the respondent corporation is opposing grant to pay scale to SDI/RSIs and Helpers mainly on the plea that their organisation is basically a commercial organisation and the incentive scheme that results in better sales. The Authorised Representative of respondent has also maintained that in case these categories of employees are allowed regular pay scales, the respondent corporation

is likely to incur losses as presently the profits of the corporation are nominal. On the other hand Authorised Representative for the petitioner Union has claimed that there is discrimination as categories of SDI/RSIs and Helpers are being denied regular pay scales, although all other categories of employees in the respondent corporation are being allowed regular pay scales as prevalent in the Panjab State Civil Supplies Corporation. He has also contended that the SDI/RSIs are performing duties similar to the Inspectors of Panjab State Civil Supplies Corporation who are allowed pay scale of Rs. 570—1080. Half heartedly it has also been urged that SDI/RSI are entitled to Rs. 700—1200 as is being allowed to the Store Incharge as deposed by PW-2 Shri Ekadshi Dass. He has placed reliance on the decision of Hon'ble Supreme Court in *Y.K. Mehta and Others V. Union of India and another* reported in AIR 1988 Supreme Court 1970 and also on the decision of our own Hon'ble High Court in Civil writ petition No. 314 of 1988 entitled *Mrs. Vidya Sharma v. State of Himachal Pradesh*.

12. The petitioner union raised dispute and after the submission of failure report by the Conciliation Officer, the present reference has been made in exercise of powers conferred under section 12 (5) of the Industrial Disputes Act, 1947. Apparently hundreds of SDI/RSI and Helpers are lying for justice as they have been denied the regular pay scales, which has given cause for Industrial un-rest. The fact that the respondent corporation is a company duly registered under the Companies Act, but for all intents and purposes, respondent corporation is part and parcel of the State Government and is an instrumentality or agency of State and it should serve as an model employer and should not set up technical pleas to defeat the right of hundreds of employees. Most of the directors of the corporation are senior Government Officers. There is apparently no reason to deny pay scale to SDI/RSIs and Helpers on the Panjab pattern as such an action is discriminatory and unjust and likely to disturb the Industrial peace. This Tribunal has been conferred power under section 7A to determine the wage structure which implicitly confers jurisdiction to determine the pay scale to which SDI/RSIs and Helpers are entitled. In such and similar like situations, the Hon'ble Supreme Court was considering the discriminatory treatment between the Staff Artists of the Films Division who were allowed regular pay scale by the Central Government and Staff Artists of Door Darshan who were being appointed on contract basis. The Apex Court in Y.K. Mehta's case found such an arrangement discriminatory and violative of Articles 14 and 16 of the Constitution and declared that the Staff Artists of Door Darshan were also entitled to pay scale as was being allowed to such employees in the Films Division.

13. The Ld. Authorised Representative of the Respondent Corporation has vehemently argued that grant of regular pay scale to SDI/RSI and Helpers will result in losses to the Corporation which is presently earning nominal profits. From the annual report for the year 1980-81 during the first year the respondent corporation incurred loss of Rs. 2,59,234/- From the second year's annual report 1981-82 the earlier losses were wiped out and the corporation made profit of Rs. 6,000/- The profit increased to Rs. 63,000/- next year as is evident from the annual report for 1982-83. The respondent Corporation increased its profit to Rs. 2,40,000/- as per annual report for 1983-84. It further increased to Rs. 4,16,000/- as per the annual report for 1984-85. The corporation made profit of Rs. 11.21 lacs as is evident from the annual report for the year 1985-86 and made profit of Rs. 10.48 lacs during the year 1986-87 and it increased to Rs. 30.51 lacs during the year 1987-88. Respondent Corporation is not running in losses and it should not deny the rightful claim on the workers of the apprehension that the grant of regular pay scales will result in losses to the Corporation. Infact the workers will be more satisfied and some sort of incentive scheme to promote more sales can be devised by the respondent corporation which will serve as incentive to SDI/RSIs even after they are allowed regular pay scales. Moreover, the respondent corporation can curtail its wasteful expenditure and plan for the next year on the basis of pay scale being awarded. The principle of "equal pay for equal work" has been incorporated in the directive principles in Articles 38 and 39 of the constitution. The International Labour Organisation also recognise "the principle for equal remuneration for work of

equal value" as constituting one of the means of achieving the improvement of conditions "involving such injustice, hardship and privation to a large numbers of people as to produce unrest so great that the peace and harmony to the world are imperilled". The Apex Court has examined the doctrine of "equal pay for equal work" right from *Kishori Madan Lal Bakshi V. Union of India AIR 1962 SC 1139* to the decision in *Randhir Singh V. Union of India and Others AIR 1982 SC 879* and has held that in the light of preamble and Article 39 (d) "the principle of equal pay for equal work" may be properly applied in the case of unequal scales of pay based on no classification or irrational classification. Even in recent decision in case *Jai Pal and Others v. State of Haryana and Others AIR 1988 SC 1704*, the Apex Court held that the state is under a constitutional obligation to ensure that equal pay is paid for equal work and the Directive Principles of State Policy as contained in Article 39 (d) are fundamental in nature and that the purpose of the Article is to fix certain social and economic goals for avoiding and discrimination amongst the people doing similar work in matter relating to pay. Our own Hon'ble High Court in case *Mrs. Vidya Sharma and Others v. State of Himachal Pradesh in CWP No.314 of 1988* had followed the law laid down by the Hon'ble Supreme Court on the doctrine of "equal pay for equal work" and had allowed minimum pay to the daily rated beldars in the pay scale of regularly employed Clerks.

14. From the aforesaid discussions there is no reason to disallow regular pay scale to SDI/RSIs and Helpers. However, it requires to be determined as to which pay scale they are entitled to be placed. Undisputedly the Himachal Pradesh Government employees are allowed same pay scale as is being sanctioned in favour of the employees of the Panjab State. Similarly employees working in different corporations in Himachal Pradesh are allowed pay scale for such like corporations in the Panjab State. Thus the claim of the petitioner union to allow SDI/RSIs pay scale of Rs. 700—1200, which is the pay scale for Store Keeper of Himachal Pradesh Agro Industries Corporation, deserves to be ignored. Even otherwise the petitioner union has failed to establish in any manner that the nature of duties of the Store Incharge of Himachal Pradesh Agro Industries Corporation is similar to the duties performed by SDI/RSI. The petitioner instead of confining their claim to the pay scale of the Public Distribution Clerks of the Panjab State Civil Supplies Corporation have tried to adduce evidence to show that the post of SDI/RSI is to be equated with the post of Inspector of the Panjab State Civil Supplies Corporation who is in the pay scale of Rs. 570—1080. The petitioners rely upon the statement of Shri Krishan Kumar, PW-3, who is working as Inspector in the Panjab State Civil Supplies Corporation but testimony of this witness does not inspire confidence as he has failed to produce the manual which incorporates the duties of Inspectors and he had to admit that three Public Distribution Clerks were working under him who are engaged for the purpose of sales. The statement of Shri Ajai Pal, RW-3, Deputy Manager Panjab State Civil Supplies Corporation, which is duly supported by documentary evidence i. e., letter Ex.R-17 dated 17-4-1986, clearly shows that the Public Distribution Clerks of Panjab State Civil Corporation are responsible for storage and distribution of essential commodities such as Palm Oil, pulses, levy cement and sugar. The post of Public Distribution Clerk is in the pay scale of Rs. 400—600. It will not be out of place to mention the fact that SDI/RSIs are being appointed as Assistant Accountants by the respondent corporation, the post is in the pay scale of Rs. 570—1080 with three years of experience as salesman. In such like circumstances if SDI/RSI are allowed pay scale of Rs. 570—1080, it will create anomalous position as some of the senior salesman with more than three years of experience must have been appointed as Assistant Accountants in the pay scale of Rs. 570—1080 in accordance with the Service Bye-laws of the corporation. Keeping in view all the facts and circumstances, the post of SDI/RSIs is equated with the post of Public Distribution Clerk of the Panjab State Civil Supplies Corporation in the pay scale of Rs. 400—600.

15. As far as Helpers are concerned, presently they are being engaged on daily wages basis as per the minimum wages fixed by the Himachal Pradesh Government from time to time. In view of the fact that in the Panjab State Civil Supplies Corporation, the Helpers are in the pay

scale of Rs. 300—430 and there is no reason to deny this pay scale to the Helpers specifically in view of the law laid down by our own High Court in Mrs. Vidya Sharma's case. The Helpers working in the respondent corporation are equated with the Helpers of the Panjab State Civil Supplies Corporation the pay scale of Rs. 300—430 and both these issues are decided accordingly.

Issue No. 3.

16. This issue has not been pressed by the AR of the petitioner in view of the fact that the categories of employee i.e. Accountant, Steno-typist, Assistant, Driver, Conductor, Peon and Chowkidar have already been granted pay scales by the respondent corporation and no evidence has been adduced by the petitioner on this issue.

RELIEF

17. On the aforesaid discussions, it is held that the employees working as SDI/RSIs are declared to be Public Distribution Clerks and they are entitled to pay scale of Rs. 400—600 and Helpers who are presently being paid daily wages are ordered to be placed in the pay scale of Rs. 300—430. The employees will be declared to have been appointed against the post of Public Distribution Clerk and Helpers on the aforesaid scales from the date of appointment, but they will be entitled to pay in their respective pay scales *w. e. f. 1-4-1989*. It is clarified that the employees will be given notional increments from the date of appointment till 1-4-1989, from which date they are being allowed regular pay scales. Since the respondent corporation has framed Service Bye-laws and under clause-8 the said bye-laws the employees are required to remain on probation for a period of one year extendable upto 3 years, the aforesaid categories of employees working on contractual basis till now, their period of probation shall commence from 1st April, 1989 and they will be governed by the bye-laws framed by the corporation.

18. As noticed in the earlier part of the award, the respondent corporation will also take steps to allow some sort of incentive to the Public Distribution Clerks for more sales and for better results as the incentive scheme has helped the respondent corporation in increasing its turn-over.

Announced today the 9th March, 1989.

S. S. AHUJA,
Presiding Officer, Industrial Tribunal,
Himachal Pradesh.